Landmark International Trucks, Inc. *and* Local Lodge 555 of the International Association of Machinists and Aerospace Workers, AFL-CIO. Case 10-CA-15673

September 16, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On May 8, 1981, Administrative Law Judge William N. Cates issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and briefs in support thereof.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order,[2] as modified herein.

The Administrative Law Judge found that Respondent, on November 15, 1979, voluntarily recognized the Union as the exclusive bargaining representative of its service department employees, and commenced negotiations with the Union on that date. He further found that Respondent, on December 4, 1979, withdrew recognition from the Union. Finally, the Administrative Law Judge concluded that Respondent's withdrawal of recognition was in violation of Section 8(a)(5) and (1) of the Act. Primarily for the reason discussed below, as well as for the reasons advanced by the Administrative Law Judge,[3] we find that Respondent violated Section 8(a)(5) and (1).

It is well-established Board law that, once an employer has voluntarily recognized a majority union, that union becomes the unit employees' exclusive bargaining representative with which the employer is bound to bargain, and that withdrawal by the employer from its commitment to recognize the union without affording a reasonable time for bargaining violates the employer's bargaining obligation. *Brown & Connolly, Inc.*, 237 NLRB 271, 275 (1978), enfd. 593 F.2d 1373 (1st Cir. 1979); *Keller Plastics Eastern, Inc.*, 157 NLRB 583, 587 (1966). Such a requirement to continue bargaining serves to effectuate the policies of the Act by offering the parties a reasonable opportunity to negotiate successfully and to execute an agreement.

Based upon the Administrative Law Judge's findings, with which we agree, Respondent's obligation to bargain attached on November 15, 1979, when it voluntarily recognized the Union. We do not believe that the time between that date and December 4, 1979, offered a reasonable opportunity for bargaining to succeed,[4] and we therefore find that Respondent's withdrawal of recognition on the latter date was in violation of Section 8(a)(5) and (1) of the Act.

AMENDED CONCLUSIONS OF LAW

Insert the following as paragraphs 7, 8, and 9, and renumber paragraphs 7 and 8 accordingly:

"7. On or about November 15, 1979, Respondent recognized the Union as the exclusive bargaining representative of the employees in the aforesaid appropriate bargaining unit.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We agree with the Administrative Law Judge that, in the circumstances of this case, Respondent's acts of assistance in providing service department employees with form letters, preaddressed envelopes, and detailed instructions were more than ministerial, that the plan devised allowed Respondent to monitor unit employees' decisions whether to resign from the Union, and that Respondent had no contractual or other need to obtain this information. We find that the pressure placed upon employees by Respondent's request to be informed of their decisions regarding resignation from the Union, in light of the fact that Respondent had no valid reason for obtaining this information, such as existed in *Perkins Machine Company*, 141 NLRB 697 (1963) (contract required notice of revocation of checkoff authorizations to be sent to the company during an annual 15-day escape period), was coercive. We disavow the Administrative Law Judge's distinguishing of *Perkins* to the extent not consistent herewith.

In agreeing with the Administrative Law Judge's conclusion that Respondent's conduct constituted 8(a)(1) interference with employee rights, we find it unnecessary to rely upon his finding that at the time of Respondent's unlawful acts it had received no request for assistance.

[2] The Administrative Law Judge failed to conform his Conclusions of Law and recommended Order with his findings. We shall amend his Conclusions of Law and modify his recommended Order where appropriate to reflect his findings that Respondent recognized the Union as the exclusive bargaining representative of the unit employees on or about November 15, 1979; that Respondent began bargaining with the Union as the exclusive bargaining representative of the unit employees on or about November 15, 1979; and that Respondent withdrew recognition from the Union as the exclusive bargaining representative of the unit employees in violation of Sec. 8(a)(5) and (1) of the Act on or about December 4, 1979. We shall also modify the Administrative Law Judge's recommended Order to reflect that the unit employees are employed by "Respondent" rather than "Harvester." Finally, the Administrative Law Judge inadvertently miscited *Thomas Industries, Inc.* The correct citation is 255 NLRB 646 (1981).

[3] Assuming, *arguendo*, that Respondent had not voluntarily recognized the Union, we would find, for the reasons discussed by the Administrative Law Judge, that Respondent failed to present objective considerations that would support a good-faith doubt as to the Union's continuing majority status.

[4] We can discern no principle that would support distinguishing a successor employer's bargaining obligation based on voluntary recognition of a majority union from any other employer's duty to bargain for a reasonable period.

"8. On or about November 15, 1979, Respondent began bargaining with the Union as the exclusive bargaining representative of the employees in the aforesaid appropriate bargaining unit.

"9. On or about December 4, 1979, Respondent withdrew recognition from the Union as exclusive bargaining representative of the employees in the aforesaid appropriate bargaining unit in violation of Section 8(a)(5) and (1) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Landmark International Trucks, Inc., Knoxville, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Refusing to recognize and bargain collectively with Local Lodge 555 of the International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive bargaining representative of the employees in the following appropriate bargaining unit:

> "All mechanics, helpers and apprentices employed by Respondent at its Knoxville, Tennessee, Motor Truck Service Station; excluding the foremen, manager, clerical employees, supervisors as defined in the Act, and all other employees."

2. Insert the following as paragraph 1(b) and reletter the subsequent paragraphs accordingly:

"(b) Withdrawing recognition from the Union as the exclusive bargaining representative of the employees in the aforesaid appropriate bargaining unit."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to recognize and bargain with Local Lodge 555 of the International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive bargaining representative of our employees in the following appropriate bargaining unit:

> All mechanics, helpers and apprentices employed by the Employer at its Knoxville, Tennessee, Motor Truck Service Station; excluding the foremen, manager, clerical employees, supervisors as defined in the Act, and all other employees.

WE WILL NOT withdraw recognition from the aforesaid Union as the exclusive bargaining representative of our employees in the appropriate unit described above.

WE WILL NOT solicit our employees to withdraw from membership in the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed under Section 7 of the Act.

WE WILL recognize and, upon request, bargain collectively with the aforesaid Union as the exclusive representative of all employees in the appropriate unit described above with regard to rates of pay, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

LANDMARK INTERNATIONAL TRUCKS, INC.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge: This matter was heard in Knoxville, Tennessee, on January 21, 1981. Upon a charge filed on April 1, 1980, by Local Lodge 555 of the International Association of Machinists and Aerospace Workers, AFL-CIO, herein the Union or the Charging Party, the Regional Director for Region 10 of the National Labor Relations Board, herein the Board, issued a complaint on June 27, 1980, alleging that Landmark International Trucks, Inc., herein Respondent, violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, by soliciting employees to withdraw from membership in the Union and by withdrawing recognition from and thereafter failing and refusing to bargain with the Union with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Delaware corporation licensed to do business in the State of Tennessee with an office and place of business located in Knoxville, Tennessee, where it is engaged in the sale and service of trucks. During the 12-month period preceding the hearing of the case herein, Respondent had a gross volume of business in excess of $500,000, and during the same period purchased and received at its Knoxville, Tennessee, operation goods valued in excess of $50,000 directly from suppliers located outside the State of Tennessee.

The complaint alleges, Respondent admits, and I find that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, Respondent admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

For a number of years, International Harvester Company, herein Harvester, operated an office and place of business in Knoxville, Tennessee, where it was engaged in the sale and service of new International Harvester trucks and other types of used trucks. Harvester recognized and on or about March 29, 1977, entered into a collective-bargaining agreement with the Union which by its terms expired on December 1, 1979. Harvester also executed a local supplemental contract with the Union on or about April 18, 1978, which supplemental agreement by its terms expired on April 20, 1981. Harvester recognized the Union as the exclusive bargaining representative of its employees in an appropriate unit described as follows:

> All mechanics, helpers and apprentices employed by Harvester at its Knoxville, Tennessee, Motor Truck Service Station; excluding the foremen, manager, clerical employees, supervisors as defined in the Act, and all other employees.

Harvester ceased operations at its Knoxville, Tennessee, facility on October 31, 1979. On November 1, 1979, Respondent acquired Harvester's Knoxville, Tennessee, facility and took complete control of the business on that date. There is no contention that Respondent assumed the collective-bargaining agreements between Harvester and the Union. Respondent purchased Harvester's inventory and other assets and has since November 1, 1979, engaged in business operations identical to Harvester; that is, selling and servicing new International Harvester trucks and other types of used trucks at the same geographical location. The parties stipulated at the hearing that Respondent sought to do business with the same customers as Harvester. The stipulation was as follows:

> Although [Respondent] did not know the identity of all customers of [Harvester] in the Knoxville, Tennessee trade area, [Respondent] since November 1, 1979, has sought to do business with all credit worthy persons in that area desiring services and materials of the nature provided by [Respondent] including credit worthy persons and entities whose accounts receivable [Respondent] purchased from [Harvester] and prospective customers with whom [Harvester] had sought or planned to do business.

As of October 31, 1979, Harvester employed 31 employees in the service department at its Knoxville, Tennessee, facility.[1] As of November 1, 1979, when Respondent took control of Harvester's business, its service department was comprised of 18 employees, 17 of whom had previously been employed by Harvester. Also, the sales personnel employed by Respondent on November 1, 1979, had until October 31, 1979, been employed by Harvester. Of Respondent's six accounting department employees, five were previous employees of Harvester. Harvester's service manager, Fred Martin, was hired as of November 1, 1979, to be Respondent's service manager. Harvester's branch manager, J. F. Coble, Jr., was hired at the commencement of Respondent's operations as the sales manager in the truck department. Harvester's assistant service manager, Jerry Kilpatrick, was hired by Respondent at the commencement of its operations as its service manager.

B. *The Issues*

The principal issues which were raised by the pleadings are:

1. Whether Respondent is a successor employer to Harvester.

2. Whether Respondent was obligated to bargain with the Union on and after its November 1, 1979, assumption of complete control of Harvester's Knoxville, Tennessee, operation.

3. Whether the Union requested recognition and whether Respondent recognized the Union as the collective-bargaining representative of its service department employees.

4. Whether Respondent on or about November 19, 1979, in violation of Section 8(a)(1) of the Act, solicited its employees to withdraw from the Union.

5. Whether Respondent, by withdrawing recognition from and refusing to bargain with the Union, violated Section 8(a)(5) of the Act.

C. *The Successorship Issue*

The Board held in *Miami Industrial Trucks, Inc. and Bobcat of Dayton, Inc.*, 221 NLRB 1223, 1224 (1975):

[1] The record evidence would indicate that, although listed on G.C. Exh. 3 as employees in the service department of Harvester on October 31, 1979, F. T. Donahoo and W. R. Hogans were not employed in that department.

> The keystone in determining successorship is whether there is substantial continuity of the employing industry.

The Board, in *Miami Industrial Trucks, Inc., supra*, as well as in *Saks & Company, d/b/a Saks Fifth Avenue*, 247 NLRB 1047 (1980), enfd. in pertinent part 634 F.2d 681 (2d Cir. 1980), explained what it meant by continuity of the employing industry. In its explanation, the Board took into consideration factors such as whether the business continued to be operated at the same location with the same work force and supervision, rendering the same product and/or services to essentially the same or like customers. See also *Hot Bagels and Donuts of Staten Island, Inc. and Amboy Baking, Inc.*, 244 NLRB 129 (1979), enfd. 622 F.2d 1113 (2d Cir. 1980). In the instant case all of the factors indicating a successor employer were present; i.e., Respondent operated the facility at the same location without a hiatus, operated the identical type of business, and rendered the same service and product, and, as indicated by the stipulation set forth, *supra*, Respondent sought and continues to seek to do business with the same or like customers that Harvester did. Respondent's service department work force was composed of 18 employees, 17 of whom had previously been employed by Harvester. Additionally, Respondent retained the same sales employees and, except for one, the same accounting or clerical employees and essentially the same managerial personnel.

Respondent, in its brief, appears to concede that the facts of the instant case warrant a finding that it is a successor employer.

Based on the established facts as outlined above, I conclude and find that Respondent is a successor employer to Harvester.

D. *Respondent's Bargaining Obligation on and After November 1, 1979*

At the time Respondent became a successor employer, there was in existence a national collective-bargaining agreement as well as a local supplemental agreement (G.C. Exhs. 9 and 11). Respondent was, therefore, subject to a bargaining obligation inasmuch as the predecessor had in a presumptively appropriate unit such an obligation. The collective-bargaining agreement referred to above established a rebuttable presumption of the Union's continued majority representative status in the unit described *supra. Barrington Plaza and Tragneiw, Inc.*, 185 NLRB 962 (1970), enforcement denied on other grounds *sub nom. N.L.R.B.* v. *Tragniew, Inc. and Consolidated Hotels of California*, 470 F.2d 669 (9th Cir. 1972). Such a presumption is applicable to a successor employer. In *N.L.R.B.* v. *William J. Burns International Security Services, Inc.*, 406 U.S. 272 (1972), the Supreme Court affirmed the Board's successor employer doctrine finding that a successor employer, absent a reasonably based good-faith doubt of the incumbent union's majority, is obligated to recognize the continuing representative status of the bargaining agent of its predecessor's employees in an appropriate unit taken over from the predecessor. See *Zylan Pontiac*, 252 NLRB 201, 202 (1980). I find such a presumption to exist in the instant case. I shall consider *infra* whether Respondent at any time overcame the presumption of a continuing majority representative status by the Union. Additionally, I shall consider whether the Union at any time made a demand of Respondent for recognition and/or bargaining.

E. *The Issue of the Union's Request for and Respondent's Recognition of the Union*

In a letter dated October 31, 1979, which stated as a subject matter "Union recognition," the Union, through Grand Lodge Representative McClendon, apprised Respondent as follows:

> *Take notice that* in accordance with the provisions of the Labor Management Relations Act, as amended, the International Association of Machinists and Aerospace Workers, Local 555, is the collective-bargaining representative of your employees.
>
> Be advised that we are requesting a meeting with you for the purpose of representation and negotiations.
>
> *Be further advised that* we are arranging our schedule to meet with you at an early date.
>
> Please advise me of the time, date, and place you desire to meet.

Respondent acknowledged receipt of the letter on November 2, 1979.

Respondent contends that the duty to recognize and bargain presupposes that a demand for recognition and for bargaining has been made, citing *Raymond Convalescent Hospital, Inc.*, 216 NLRB 494, 500 (1975). Respondent contends that the letter from the Union was not clear or precise enough to impose upon Respondent a duty to recognize or bargain with the Union. The Respondent further contends the letter did not state with specificity what employees the Union contended or claimed it was representing. In summary, Respondent contends that the Union's letter of October 31, 1979, was so vague, ambiguous, and legally inoperative that it could not constitute in any way a demand for recognition or a notification of the unit for which the Union sought recognition. Respondent contends that, if the Union had been referring to its service department employees only, it should have so stated in clear and unequivocal language in its letter.

Counsel for the General Counsel contends that Union's October 31, 1979, letter constituted a demand of Respondent for recognition and bargaining and as such, in the circumstances of the instant case, Respondent was obligated to bargain with the Union. Counsel for the General Counsel further contends that "at the latest, Respondent's obligation [to recognize and bargain] took effect on November 2 when Respondent received the demand letter from the Union." Counsel for the General Counsel contends that Respondent's argument that the Union's demand for recognition and bargaining was inadequate is without merit.

A clear reading of the Union's October 31, 1979, letter, which stated as its subject matter "Union recognition," taken in conjunction with the national and local supplemental collective-bargaining agreements which Re-

spondent's predecessor had with the Union, leaves no room for doubt that the Union was requesting recognition and negotiations with respect to the service department employees. It is equally as clear that the Union was specifically making a demand of Respondent for recognition and bargaining. A conclusion that Respondent knew that the Union was referring to the service department employees was further borne out by the testimony of Respondent's president, Clarence Mayo Sydes, when he stated, "On November 6 I informed the employees that I had received a letter from Mr. McClendon and that I had responded on November 6 to that letter." Sydes further testified that he did not meet with any other employees except those of the service department with respect to the letter he had received from the Union on November 2, 1979, or his response of November 6, 1979.

Sydes' letter of November 6, 1979, addressed to Grand Lodge Representative McClendon of the Union, simply acknowledged receipt of the October 31 letter and indicated a willingness to meet during the week of November 12, 1979.

I conclude and find that the overwhelming weight of the evidence indicates that Respondent knew that the Union's demand for recognition pertained to the service department employees. I simply find Sydes' testimony that he was not informed that the Union's demand referred to the service department employees until he met with the Union on November 15, 1979, as unpersuasive. The October 31 letter of the Union, Respondent's November 6 response (G.C. Exhs. 5 and 6), and Sydes' actions on November 6 and thereafter indicate full well that Respondent knew the unit for which the Union sought recognition and bargaining.

As a result of the October 31 and November 6, 1979, letters, the parties mutually agreed on a meeting date of November 15, 1979. Those present for Respondent at the November 15, 1979, meeting were Sydes and Respondent's service manager, Fred Martin. Those present for the Union were Grand Lodge Representative McClendon and Local Union President A. G. Shelton. The meeting lasted approximately 15 to 20 minutes and was held at the Valley Fidelity Bank Building in Knoxville, Tennessee. Grand Lodge Representative McClendon stated that the parties exchanged introductions and personal histories and then, according to McClendon, he told Sydes, "[O]ur purpose there was, as stated in the letter, for gaining recognition from his corporation and to negotiate a collective-bargaining agreement. Although I had no documents prepared, I wanted to have—I wanted to set a future meeting where I wanted to present proposals."

Counsel for the General Counsel also called Local Union President Shelton to testify with respect to the November 15, 1979, meeting. Shelton essentially corroborated the testimony of McClendon except that Shelton stated that there was discussion of Respondent's insurance program. According to Shelton, there had been some complaints from some of the members that they would have to pay a portion of their insurance coverage because Respondent had taken over the operation of Harvester. Neither Sydes nor McClendon testified with respect to insurance being discussed; in fact, Sydes denied that insurance was discussed. I discredit the testimony of Shelton that insurance was discussed at the November 15, 1979, meeting. Shelton did not impress me as a credible witness for, among other reasons, he testified, as will be discussed *infra*, that he did not know of any employee's withdrawing from the Union nor had he heard about any withdrawals from the Union from any other source. However, employee Whaley's withdrawal card (Resp. Exh. 2) bore the signature of Shelton as the representative who authorized the withdrawal of Whaley from the Union.

Sydes testified with respect to the November 15, 1979, meeting with the Union that, after the parties exchanged "pleasantries," he asked "Mr. McClendon what the purpose of this meeting was, and he indicated to me first that he was seeking representation for the service department employees, and if we so allowed him to have representation, then he would seek to bargain a contract." Sydes testified this was the first time he had clearly been informed that it was the service department employees for whom the Union was seeking recognition. Sydes testified he told McClendon that he would take his request for recognition and bargaining under advisement. Sydes stated he did not grant the Union recognition at that meeting. A date of December 12, 1979, was mutually agreed to between the parties for the next meeting.

McClendon did not recall Syde's making any statement with respect to taking the matter of whether to recognize and bargain with the Union under advisement. McClendon further explained the reason "we [the Union] didn't propose recognition at that meeting. My letter had told him [Sydes] we wanted to meet to talk about these things but I explained to him I didn't have specific proposals ready but I would have at a future meeting."

I discredit the testimony of Sydes that he informed the Union he would take the matter of recognition of and bargaining with the Union under advisement. The actions of the parties indicate and dictate a conclusion that such a statement was not made. If Respondent was simply taking the matter under advisement as to whether to recognize the Union or not, there would have been no need to set a December 12 date for further discussions inasmuch as a meeting would not have been necessary until it was determined by Respondent whether it was going to recognize the Union. Further, the correspondence between the parties of October 31 and November 6, taken in conjunction with the acknowledged request of McClendon to recognize and bargain with the Union at the November 15 meeting and an agreement for a subsequent December 12 meeting, all indicate a recognition of the Union by Respondent and demonstrate an undertaking on the part of Respondent to negotiate with the Union.

I credit the testimony of McClendon that he informed Sydes at the November 15 meeting of his intention to present contract proposals at the December 12, 1979, meeting. McClendon's testimony in that respect is supported by General Counsel's Exhibit 10, which was proposals the Union indicated it had prepared to present to Respondent in anticipation of its December 12, 1979, scheduled meeting. Based on the credited testimony set

out above, and taken in conjunction with the supporting record documentation, I conclude and find that the parties agreed to December 12, 1979, as a meeting date for the explicit purpose of negotiating further toward a collective-bargaining agreement.

F. *The Alleged Solicitation of Employees To Withdraw From the Union*

Sydes testified he met with the service department employees on November 15, 1979, after having met with the Union. Sydes stated, "I informed them that I had had the meeting with Mr. McClendon and Mr. Shelton, and that, one, he was seeking representation for them—the service center employees, and, two if that were granted, then, two, was going to seek to negotiate a contract." Sydes testified that thereafter several employees stated in essence, "We don't want to be in the Union. How do we get out of the Union?" Sydes testified that the inquiries came at a time when he had not asked for comments or questions. Sydes recalled, "Two employees that I remember . . . asked about getting out of the Union." At that point, according to Sydes, employee Whaley stood up, patted his locker, and said, "I have resignation cards for everyone here." Sydes testified he was surprised at what he heard and stated to the group, "I don't know anything at all about this, but I will endeavor to ascertain your legal rights for resigning from the Union . . . . Whether you stay in the Union or resign is up to you."

Sydes acknowledged on cross-examination that he "interpreted" the "essence" of the comments of the two employees to be a request for assistance on how to get out of the Union.

Respondent called employee James H. Whaley, who testified that by mid-October 1979 a majority of the employees "had insinuated to me that they didn't feel like they wanted the Machinists Local 555 to represent us any further is the way I understood it." Based on Whaley's understanding of the insinuation of his fellow employees, he stated he contacted the secretary-treasurer of Local 555, W. A. Johnson, and asked Johnson for the necessary paperwork for individuals to withdraw from the Union. Whaley told Johnson, "I just told him that the majority of the men—the big majority of them—wanted to get withdrawal cards so they wouldn't owe any further union dues." Whaley testified he received the applications for withdrawal from the secretary-treasurer of the Union around November 10, 1979, and, when employees spoke up at the November 15, 1979, meeting that they did not care about remaining in Local 555, this was the first time he informed the employees he already had applications for withdrawal cards in his possession. Whaley testified that after Sydes and the other management representatives left the room where the meeting was, he placed the withdrawal application forms on the table so that employees who desired could obtain them.

Respondent contends that as a result of the November 15 meeting it prepared and delivered on November 19, 1979, a letter to its service department employees.

In the November 19, 1979, letter, which was given to the employees by their foremen, Respondent advised its service department employees that a number of them had asked how they might resign from the Union and that the letter was Respondent's explanation of how it might be accomplished. Respondent informed its employees, among other things, "You can resign from the Union and revoke your checkoff authorization at this time if you wish to do so." Respondent further stated, "The decision is yours to make. Landmark International simply wanted to be sure that you know about, and understand, your rights and privileges. Whether you resign from the Union or remain a union member will not make any difference in your wages, benefits, or treatment by the Company." Respondent then advised the employees that one way to resign from the Union was to follow the three-step procedure which it outlined in its letter. Respondent informed the employees that, if they desired to resign from the Union, they should date and sign two of the three enclosed copies of a letter addressed both to Respondent and the Union, and then mail those two copies to Respondent and the Union by certified mail in the enclosed envelopes, retaining the third copy of the letter for their personal records. Respondent advised them that the other way to resign from the Union was to sign a union withdrawal slip and send a copy by certified mail to Respondent and the Union. The letter attached to Respondent's November 19, 1979, letter, which was addressed to both Respondent and the Union, stated:

> Dear Sirs:
>
> I am hereby notifying you that I revoke my authorization for deduction of union dues from my wages and I hereby resign my membership in the Union.
>
> Yours truly

Respondent contends that its letter of November 19, 1979, was written for the purpose of informing its employees of their legal rights. Respondent contends that its letter was based on a like letter used in *Perkins Machine Company*, 141 NLRB 697, 699–700 (1963). Respondent also contends that the letter was factually and legally accurate and was couched in terms as noncoercive as language could make it. Respondent would further rely on *Cyclops Corporation*, 216 NLRB 857, 858 (1975), which it contends stands for the principle that an employer may correctly inform employees of their legal rights whether asked for or not, and that such information to employees of their legal rights is entitled to at least as much protection under the Act as is the expression of views, argument, or opinion protected by Section 8(c).

Respondent contends that counsel for the General Counsel's attempt to distinguish *Perkins* and *Cyclops* because they involved "contract escape" clauses is patently specious and that an employer may inform employees of their legal rights regardless of whether those rights are statutory or contractual.

Counsel for the General Counsel contends that an employer unlawfully interferes with its employees' Section 7 rights when it attempts to induce employees to sign statements withdrawing from or repudiating the union. Counsel for the General Counsel relies on *City Supply Corporation*, 217 NLRB 950, 953 (1975), and *The Deutsch Company, Electronic Components Division*, 180 NLRB 8, 20 (1969), enfd. 445 F.2d 901 (9th Cir. 1971). Counsel for

the General Counsel contends that Respondent, by delivering its November 19, 1979, letter to each service department employee, flagrantly violated Section 8(a)(1) of the Act. Counsel for the General Counsel contends that Respondent only paid lip service in its letter advising employees that they may decide on their own whether to resign from the Union. Counsel for the General Counsel contends that the letter was clearly intended to induce resignation. In support of such a contention, counsel for the General Counsel states that Respondent gave explicit instructions to employees on how to resign from the Union, even going to the extent of printing enclosed resignation letters and envelopes. Further, counsel for the General Counsel contends that Respondent, by instructing its employees to send a copy of the signed letter of resignation to Respondent as well as the Union, was engaging in manifestly coercive conduct which constituted nothing more than an attempt on the part of Respondent to monitor which employees had acceded to its solicitations to withdraw from the Union. Finally, counsel for the General Counsel contends that Respondent did not in fact have a request for assistance from any employee with respect to resigning from the Union, but rather had on its own interpreted comments of discontent with the Union to constitute a request for assistance. Counsel for the General Counsel contends that Respondent's reliance on *Perkins Machine Company, supra*, is misplaced inasmuch as the collective-bargaining agreement in *Perkins* provided an "escape period," and required that employees send a letter by registered mail to both the union and the employer informing them of the employees' withdrawal from the union. Counsel for the General Counsel contends that in the instant case Respondent was not apprising employees of any contractual rights or duties, but rather was soliciting employees to withdraw from the Union. Counsel for the General Counsel contends that Respondent thus violated Section 8(a)(1) of the Act by soliciting its employees to withdraw from the Union.

The Board adopted the Administrative Law Judge's Decision in *City Supply Corporation, Supra* at 953, wherein it stated:

> It is well established that the lending of assistance by an employer in an employee's withdrawal from a union, or the suggestion of the means and manner by which this can be accomplished, encourages and assists employees in their withdrawal and thereby interferes with, restrains, and coerces such employees in the exercise of their statutory right to retain union membership and is in violation of Section 8(a)(1) of the Act.

I find that the efforts of Respondent in the instant case constituted an inducement to employees to withdraw from the Union and as such constituted unlawful interference with employee rights in violation of Section 8(a)(1) of the Act. *The Deutsch Company, supra* at 20. I have concluded that such a finding is warranted inasmuch as Respondent provided prepared withdrawal letters and return envelopes to its employees with instructions that it be informed of any action taken by the employees with respect to withdrawing from the Union at a time when there had been no outright request for assistance from Respondent. Sydes testified on direct that in essence the employees asked how they could get out of the Union; however, on cross-examination he indicated he only interpreted what the employees said to constitute a request for assistance. I find that no real request for assistance was ever made by any employee to Respondent such as to justify Respondent's letter of instructions on how employees were to resign from the Union. In the instant case the idea for giving assistance on withdrawal from the Union originated with Respondent and as such the unrequested advice to employees as to the mechanics of revocation violated Section 8(a)(1) of the Act. The violative nature of the conduct of Respondent is further demonstrated by the fact that Respondent requested it be provided a copy of any resignation letter of any employee. In so doing, Respondent placed pressure on its employees to identify whether they had made a choice to withdraw from the Union or not; such a choice is a protected right employees are privileged to keep to themselves. *Gilbert International, Inc.*, 213 NLRB 538, 542 (1974); *Hatteras Yachts, AMF Incorporated*, 207 NLRB 1043, 1048 (1973); *Berwick Forge & Fabricating Division, Whittaker Corporation*, 237 NLRB 337 (1978); and *Cumberland Shoe Company*, 160 NLRB 1256 (1966).

Assuming, *arguendo*, that a request for assistance had been made of Respondent, its actions in the instant case went beyond mere ministerial acts of assistance and were an outright attempt to have or induce employees to withdraw from the Union in violation of the Act. *Cumberland Shoe Company, supra.*

Respondent's reliance on *Perkins Machine Company, supra*, and *Cyclops Corporation, supra*,[2] is misplaced. In the *Perkins* case there was in effect a collective-bargaining agreement between the employer and the union therein, which contract provided for maintenance of membership and deduction of dues from wages of union members, and further provided for a 15-day escape period annually to allow employees to withdraw from the union and revoke their checkoff authorizations. A short period of time prior to the beginning of the 1962 escape period in *Perkins* the employer therein sent each union member a letter apprising the union member of the contract's escape period dates and provisions and notified employees that those who wished to resign from the Union could do so only during the period indicated or they would have to wait for another year. In the *Perkins* case the employer informed the employees that, if they wanted to resign from the union, they should date and sign two copies of an enclosed letter addressed to both the employer and the union and mail them in the enclosed envelopes. Further, the letter in *Perkins* apprised the employees that the employer therein simply wanted the employees to understand their rights and privileges and was not urging them to either remain members of the union or to resign from the union, and whatever de-

[2] The Administrative Law Judge in *Cyclops Corporation, supra*, held, and the Board adopted his Decision, that there was no meaningful distinction between *Cyclops* and *Perkins*. I shall, therefore, in discussing the cases, deal primarily with the *Perkins* case.

termination they made would not affect their wages, benefits, position, or treatment by the employer therein.

In the case before me, Respondent appears to have done as it alleged it did; that is, follow the format and pattern of the *Perkins* letter to the extent of even providing enclosed envelopes for the return of the letters. However, the distinguishing factor between the instant case and the *Perkins* case is that in the *Perkins* case respondent was providing notification to the employees of their contractual rights or duties as it pertained to withdrawing from the union. In the instant case, Respondent was not informing its employees of any contractual right or duty concerning withdrawal from the Union. I therefore conclude that the instant case is clearly distinguishable as outlined above from the *Perkins* and *Cyclops* cases. Additionally, Respondent, in the instant case, without any contractual or other need to know, requested employees to provide it a copy of any resignation from the Union. Thus, Respondent was in a position not only to know who did in fact respond and withdrew from the Union, but to know which other employees had not acted on its distributed information with respect to withdrawing from the Union. The subtle pressures on employees inherent in such situations are obvious. See, for example, *PPG Industries, Inc., Lexington Plant, Fiber glass Division*, 251 NLRB 1146, 1157 (1980). In summary, I conclude and find that Respondent, by soliciting its employees to withdraw from the Union in its November 19, 1979, letter, violated Section 8(a)(1) of the Act.

G. *Respondent's Withdrawal of Recognition From and Refusal To Bargain With the Union*

Respondent, by its president, Sydes, forwarded a letter dated December 4, 1979, to Union Grand Lodge Representative McClendon wherein he stated he was responding to the Union's request for recognition and bargaining with respect to Respondent's service department employees. Respondent in its letter stated:

> The majority of employees in the service center have informed the Company that they have resigned their membership in the IAM. We understand this to mean that the service center employees no longer want to be represented by the IAM. For this reason, Landmark believes that it cannot lawfully recognize the IAM as the bargaining representative for these employees or meet with you on December 12, 1979, to discuss recognition and the terms of a new contract.

Sydes testified he sent the above-described letter (G.C. Exh. 8) to the Union after he had received signed letters from 13 of the unit employees withdrawing from the Union (Resp. Exhs. 1(a) through (m)). The letters Respondent received were the ones attached to Respondent's November 19, 1979, letter.[3] Sydes stated that, after he received 13 of the letters, he also conducted a meeting with the service department employees to inform them he had refused to recognize and bargain with the Union and had canceled the December 12, 1979, scheduled meeting with the Union. Sydes testified he told the employees he was taking the action he had indicated based on the signed letters he had received from the employees. Sydes testified that, prior to sending the December 4 letter to the Union and prior to informing the employees he was refusing to recognize and bargain with the Union, he had not only received the 13 letters of employees' withdrawal from the Union, but he had also been advised by employee Whaley that everyone had resigned from the Union.

Employee Whaley was called as a witness by Respondent and testified with respect to fellow employees' expressions to him of their discontent with the Union. I credit employee Whaley's testimony notwithstanding the fact that he at times appeared somewhat confused as to specific dates. Whaley testified that by the middle of October 1979 a majority of the "men had insinuated to me that they didn't feel like they wanted the Machinists Local 555 to represent us any further is the way I understood it." Whaley testified he informed the secretary-treasurer of the Union, "I just told him that the majority of the men—the big majority of them—wanted to get withdrawal cards so they wouldn't owe any further union dues." Whaley testified he received applications for withdrawal from the Union from the secretary of the Union. On November 15, 1979, he provided the applications for withdrawal from the Union to any employees who desired them. Whaley testified he would guess, "[W]ell, I'd say at least 97 or 98 percent of them received them [withdrawal cards]. There isn't more than one or two that I know of at all that I'd be in any doubt of." Whaley testified he told Sydes that practically everyone in the service department had gotten a withdrawal from the Union. I am persuaded Whaley told Sydes this information even though Whaley was somewhat confused as to when he told Sydes. Whaley stated, "I think—I believe we had the third meeting and something was said; and I verified that they had practically all—as far as I knew, they'd all got out of the Union. They'd got their honorary withdrawal cards." There is a real question, in my opinion, that there ever was a third meeting. However, I do not find this to destract from Whaley's overall credibility, and I conclude that at some point Whaley informed Sydes that "as far as [he] knew" practically all of the employees had gotten out of the Union. Whaley placed the alleged third meeting as "it seems to me like it was maybe two or three months after that second meeting."

Respondent contends that when it declined to recognize and bargain with the Union on December 4, 1979, it was legally justified in doing so because it had a good-faith doubt as to the Union's majority status. Respondent in its brief stated, "In fact, we believe it can be said that the Union simply did not represent a majority of the unit employees as of December 4, 1979." Respondent contends that, when 13 of its 20 unit employees resigned from the Union and revoked their dues checkoff in response to Respondent's *Perkins* letter, this action alone constituted a sufficient basis for doubting the Union's continued majority status. However, Respondent contends it did not rely solely on the written letters in its doubt of the Union's continued majority status, but it

[3] A copy of the letters in question is set forth in full elsewhere in this Decision.

also relied on the employees' comments at the November 15, 1979, meeting with respect to the Union, as well as the testimony of employee Whaley that virtually every bargaining unit employee had withdrawn from membership in the Union. Respondent contends that any one of the above factors considered alone or in combination constituted a sufficient basis for its doubting the Union's majority status. Respondent further contends that a dramatic decline in union membership either through resignations, revocations of dues checkoff, or signing cards or petitions for decertification elections are events upon which an employer can base its good-faith doubt of a continuing majority status. Finally, Respondent contends it rebutted the presumption of a continuing majority status and that in doing so the burden shifted to counsel for the General Counsel to come forward with evidence showing that the Union continued to represent a majority of its employees, and Respondent contends that counsel for the General Counsel failed to sustain its burden in that respect.

Counsel for the General Counsel contends that Respondent failed to establish that the Union had in fact lost majority support at the time it withdrew recognition from and refused to bargain with the Union. Counsel for the General Counsel contends that Respondent may not rely on the letters it received from its employees (Resp. Exhs. 1(a) through (m)) to show an actual loss of majority support as Respondent had unlawfully solicited the letters of resignation. Counsel for the General Counsel contends that, even if the letters had not been unlawfully solicited, they would not show a loss of majority support inasmuch as resignation from a union, particularly in a right-to-work State, does not demonstrate that employees no longer wish to be repesented by a union. Counsel for the General Counsel further contends that Respondent may not rely on the alleged statements of two employees at the November 15 meeting that they wanted to get out of the Union as any proof of any loss of majority status. Further, counsel for the General Counsel argues that Respondent may not rely on the testimony of employee Whaley that a majority of the employees had insinuated to him that they did not desire the Union to represent them inasmuch as Whaley testified that they only wanted to withdraw from the Union in order to avoid paying dues. Counsel for the General Counsel contends that Sydes did not rely on employee Whaley's statement that everyone in the service department had resigned from the Union inasmuch as he had stated the contrary in a pre-trial affidavit. Finally, counsel for the General Counsel would contend that, even assuming that Sydes did rely on Whaley's statement, such reliance would not justify Respondent's refusal to bargain inasmuch as Respondent could not lawfully refuse to bargain based merely on one employee's statement that other employees had resigned from the Union. Thus, counsel for the General Counsel contends that Respondent unlawfully withdrew recognition from and refused to bargain with the Union at a time when Respondent did not have proof either that the Union had in fact lost majority support or that Respondent had a good-faith doubt of a loss of majority status, and as such its withdrawing recognition from and refusing to bargain with the Union violated Section 8(a)(5) of the Act.

As indicated elsewhere in this Decision, the Board has held that, where an employing industry remains the same, a predecessor's obligation to deal with the Union which represents its employees devolves on a successor. This principle applies whether the Union's majority status with respect to the predecessor is established by the presumption raised either by certification or by the existence of an unexpired collective-bargaining agreement, as in the instant case. *Roosevelt Walker, d/b/a B & W Maintenance Service*, 203 NLRB 657 (1973); *Barrington Plaza and Tragniew, Inc., supra*. It is presumed that a union retains its majority status in a unit established by a collective-bargaining agreement even after the expiration of that agreement. See *Automated Business Systems, et al.*, 205 NLRB 532 (1973). The presumption applies not only in a situation where the employer charged with a refusal to bargain is itself a party to the preexisting contract, but also to a successorship situation. *Raymond Convalescent Hospital, Inc., supra*. Such a presumption is normally rebuttable by competent evidence that the union no longer commands majority status. *Terrell Machine Company*, 173 NLRB 1480 (1969), enfd. 427 F.2d 1088 (4th Cir. 1970), cert. denied 398 U.S. 929. The burden of rebutting the presumption rests on the party who would do so.

On the status of this record in the instant case, Respondent has not established that the Union had in fact lost majority status at the time it withdrew recognition from and refused to bargain with the Union. Therefore, if Respondent's actions be lawful under the Act, it must need have established that it had a good-faith doubt of the Union's continued majority status based on objective considerations in a context free of unfair labor practices. To determine if Respondent has met its burden, I shall examine the evidence on which it relies to establish its good-faith doubt of the continued majority status of the Union.

Respondent contends it relied, at least in part, on the reply letters it received from its *Perkins* letters to support its withdrawal of recognition from and refusal to bargain with the Union. Respondent may not rely on the responses to its *Perkins* letters (Resp. Exhs. 1(a) through (m)) inasmuch as I have concluded elsewhere in this Decision that Respondent unlawfully solicited those letters of resignation. The letters are therefore invalid indicators of a loss of majority status by the Union. Assuming, *arguendo*, the letters had been lawfully solicited, they would not demonstrate a loss of majority support sufficient to warrant Respondent's withdrawal of recognition from and refusal to bargain with the Union. As the Board held in *Thomas Industries, Inc.*, 255 NLRB 339 (1981), "[I]t is well established that a union need not have majority support in terms of membership dues checkoff in order to enjoy the presumption of continued majority status."

The statements, by two employees allegedly made to Sydes at the November 15, 1979, meeting he conducted with his employees, are insufficient for Respondent to form a basis that a majority of its employees no longer desired to be represented by the Union. Expressions of

disenchantment with the Union and a disinclination to be members of or pay dues to the Union fall short of a clear rejection of the Union, even by the two employees to whom such comments were attributed.

Respondent would also rely on information provided to it by employee Whaley that everyone in the service department had resigned from the Union. I conclude and find that Respondent may not rely on such information inasmuch as the reported assertions by an employee about other employees' expressions of union sentiment are nothing more than pure hearsay. See *Roza Watch Corp.*, 249 NLRB 284, 287 (1980); see also *Thomas Industries, Inc., supra* at fn. 4. There was no showing on this record that Respondent was informed that a majority of the unit employees had individually told Sydes that they no longer wanted the Union to represent them. Therefore, I find unpersuasive Respondent's contention that such information could form the basis of a good-faith doubt of the Union's continued majority status.

Thus, I conclude and find that none of the factors on which Respondent relied provided an objective basis on which Respondent could predicate a reasonable doubt of the Union's continued majority status. Nor do these factors have a cumulative effect which would impel a contrary conclusion. Therefore, I conclude and find that Respondent has failed to establish either that as of December 4, 1979, the Union did not in fact enjoy a majority status or that Respondent had reasonable grounds on that date for a good-faith belief that the Union had lost its majority status. Accordingly, I find that Respondent was not justified in its refusal to bargain with the Union on and after December 4, 1979, and that its refusal violated Section 8(a)(5) and (1) of the Act.

H. *Summary*

I find that Respondent is a successor employer to Harvester. I further find that the Union was the exclusive majority representative of the unit of service department employees as more specifically described elsewhere in this Decision at the time Respondent took over and assumed full control of the operations of Harvester and at all times thereafter. I also find that Respondent's conduct on November 19, 1979, in soliciting employees to withdraw from membership in the Union restrained and coerced them in the exercise of their rights guaranteed by Section 7 of the Act and as such violated Section 8(a)(1) of the Act. I further find that Respondent's failure and refusal to bargain with the Union on and after December 4, 1979, violated Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth above occurring in connection with its operations described above have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. Landmark International Trucks, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Landmark International Trucks, Inc., was a successor employer to International Harvester Company at its Knoxville, Tennessee, facility on and after November 1, 1979.

4. All mechanics, helpers, and apprentices employed by Respondent at its Knoxville, Tennessee, Motor Truck Service Station, excluding the foremen, manager, clerical employees, supervisors as defined in the Act, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. At all times since November 1, 1979, the Union has been the exclusive bargaining representative of all employees in the aforesaid appropriate bargaining unit within the meaning of Section 9(a) of the Act.

6. By soliciting its employees to withdraw from membership in the Union on or about November 19, 1979, Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. By refusing to recognize or bargain with the Union at all times on and after December 4, 1979, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment for the employees in the appropriate unit described above, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has violated the Act in certain respects, I shall recommend that Respondent be required to cease and desist therefrom. Affirmatively, Respondent will be required to recognize and, upon request, bargain with the Union and to post an appropriate notice.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[4]

The Respondent, Landmark International Trucks, Inc., Knoxville, Tennessee, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

[4] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided by Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Refusing to recognize and bargain collectively with the Union as the exclusive bargaining representative of its employees in the following appropriate unit:

> All mechanics, helpers and apprentices employed by Harvester at its Knoxville, Tennessee, Motor Truck Service Station; excluding the foremen, manager, clerical employees, supervisors as defined in the Act, and all other employees.

(b) Soliciting its employees to withdraw from membership in the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Recognize and, upon request, bargain collectively with Local Lodge 555 of the International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive representative of all of the employees in the appropriate unit described above with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Knoxville, Tennessee, facility copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."